



United States Department of the Interior



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Memorandum

To: Deputy Regional Director, Region 6

From: Assistant Regional Director, Ecological Services, Region 6

Subject: Findings and Recommendations on Issuance of an Enhancement of Survival Permit for the Gunnison Sage-grouse in Colorado to the Colorado Division of Wildlife (Permit Number TE-117730-0)

I. DESCRIPTION OF PROPOSAL

The Colorado Division of Wildlife (CDOW) has applied to the U.S. Fish and Wildlife Service (Service) for an Enhancement of Survival Permit (Permit) to authorize take of Gunnison sage-grouse (*Centrocercus minimus*) (GUSG) throughout their range in southwestern Colorado in support of the CDOW's Umbrella Candidate Conservation Agreement with Assurances (CCAA). The CDOW submitted a draft Umbrella CCAA as part of their Permit application. The proposed Permit will be issued in accordance with section 10(a)(1)(A) of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 et seq.), and the Service's CCAA Policy (64 FR 32726).

The purpose of the CCAA is for the Service to join with CDOW, as well as participating private landowners and other non-Federal landowners who enroll their lands through Certificates of Inclusion (CIs), to implement conservation measures for GUSG in a manner that is consistent with the Service's policy on CCAAs and applicable regulations. The area covered by the CCAA and Permit is shown on maps attached to the CCAA. Conservation implementation will be conducted by the CDOW and other non-Federal landowners and will generally consist of habitat protection, enhancement and restoration, and management of GUSG. The CCAA is intended to create incentives for non-Federal landowners to voluntarily conserve GUSG and their habitat while securing regulatory certainty. The CCAA will provide the CDOW and other non-Federal landowners with assurances that future activities as agreed upon will not be constrained nor result in ESA restrictions. The Permit will authorize incidental take of GUSG resulting from agreed upon activities on the enrolled property.

II. EFFECTS TO GUNNISON SAGE-GROUSE

The species is currently designated as a candidate species. It inhabits sage-steppe ecosystems. A full description of the species and its habitat requirements can be found in the State-led Gunnison Sage-grouse Rangewide Conservation Plan (RCP) (Gunnison Sage-grouse Rangewide Steering Committee 2005).

According to the RCP, actions needed to conserve the species include, but are not limited to:

- Reclaiming disturbed areas from any activities, with plants native to the sagebrush communities;
- Protecting habitat from permanent loss;
- Protecting, enhancing, and restoring habitat linkages for interchange of sage-grouse between populations;
- Where appropriate and necessary, limiting or avoiding housing or structural development in sage-grouse habitat;
- Encouraging and obtaining conservation easements with sage-grouse management plans incorporated;
- Avoiding or minimizing placement of roads in important areas of sage-grouse habitat, and where necessary, relocating or closing roads that are impacting sage-grouse;
- Developing and implementing control measures for invasive weeds in areas of impact to sage-grouse habitat;
- Incorporating suggested management practices for energy development on non-Federal land from Appendix L of the RCP, including applying a 0.6-mile radius "no surface occupancy" stipulation near lek sites for energy development, avoiding or limiting human disturbance associated with energy development, and incrementally reclaiming habitat impacted by energy development activities;
- Managing livestock grazing using various techniques to meet habitat guidelines for the sage-grouse;
- Prescribing fire in small mosaic patterns to reduce encroachment of trees and shrubs, preventing catastrophic fire and rejuvenating sagebrush communities, and suppressing wildfires where they may increase the abundance of cheatgrass or other weeds;
- Avoiding or minimizing powerline placement near lek or other important habitats, burying powerlines, marking overhead powerlines to reduce collision, and retrofitting powerlines to limit raptor predation;
- Placing new fences outside of leks or other important areas of sage-grouse habitat, marking fences to reduce risk of collision by sage-grouse, removing unused fences, and reducing facilitation of raptor predation with fencing materials or modification;

- Managing lek viewing by not allowing access for such viewing, or reducing lek viewing impacts through incorporation of lek viewing protocols;
- Monitoring and minimizing disease through vector control, to the extent feasible;
- Reducing recreational impacts to sage-grouse populations and habitat;
- Developing additional water sources for wildlife and livestock during drought, to reduce impacts to riparian, wetland, and wet meadow areas important to sage-grouse; managing invasive vegetation to improve water tables; and adjusting grazing management, prescriptive fire, and vegetation management to reduce additive impacts of drought.
- Implementing habitat treatments to enhance, maintain, or restore sage-grouse habitat. Primarily this will include removal of pinyon, juniper, and gambel oak trees or encroaching shrubs, reduction in density of sagebrush if understory forbs and grasses would benefit, and planting of native or beneficial nonnative forbs, grasses, and sagebrush. Methods to reduce trees, shrubs or competition from other vegetation may include chaining, hydro-axing, chainsawing, bulldozing, using harrows, shredders, mowers, aerators, plows, disks, and fire. Planting of seeds or seedlings may include use of a variety of drills, seeders, or other equipment to plant and disturb soil.

As identified in the Service's CCAA Final Policy (64 FR 32726) and regulations at 50 CFR 17.22, to enter into a CCAA and issue a Permit the Service must determine that the benefits of the conservation measures implemented by a property owner under a CCAA, when combined with those benefits that would be achieved if it is assumed that conservation measures also were to be implemented on other necessary properties, would preclude or remove any need to list the GUSG.

Conservation benefits for GUSG from implementation of the CCAA will accrue in a step-wise manner. First and foremost, habitats for the grouse will be protected on non-Federal lands enrolled through CIs. Additionally, habitat enrolled through CIs will contribute to keeping landscapes intact by protecting currently occupied, vacant/unknown, and potential habitats, and by precluding future habitat fragmentation for the duration of the CCAA. Second, enrolled land may, if restoration or enhancements are determined to be needed and detailed in the CI, be enhanced by the application of recommended treatments (Monsen 2005). These two efforts (habitat protection and habitat enhancement) are intended to contribute to the habitats necessary to achieve the optimum population targets cited in the RCP. The scope and scale of the benefits will depend on the amount and distribution of lands enrolled.

Further, GUSG conservation will be enhanced by providing ESA regulatory assurances for participating landowners. There will be a significant measure of security for participating landowners in the knowledge that they will not incur additional land use restrictions if the species becomes listed under the ESA in the future. The CCAA will provide substantial benefits to conservation of the species by offering landowners' incentives, and potential State and Federal funding, in exchange for utilizing best management practices to protect and enhance GUSG habitat and thereby sustain and increase GUSG populations.

Even with possible impacts from incidental take authorized under the Permit, conservation of GUSG will be enhanced under the CCAA compared to without it. Under the CCAA, habitat restoration and possibly species reintroduction measures will occur that will not occur in the absence of the CCAA. The habitat improvement measures are expected to provide benefits to the GUSG over the 20 years of the CCAA and may extend beyond that time period. Any impacts to the species allowed under the Permit will be mitigated by the benefits of habitat protection, maintenance, enhancement, restoration, and increased abundance as a result of the habitat protections and improvements.

In summary, benefits are expected to occur for the GUSG from conservation measures under the CCAA. The combination of these benefits with the CCAA's regulatory assurances will create cooperative relationships with landowners, and is expected to result in an overall benefit to GUSG conservation.

III. ENHANCEMENT OF SURVIVAL PERMIT CRITERIA - ANALYSIS AND FINDINGS

The Service's analysis and findings with respect to the CCAA satisfying the Permit issuance criteria are presented below. The criteria are stated first with any additional information supporting compliance with the criteria following:

- (1) The taking of GUSG will be incidental to an otherwise lawful activity and will be in accordance with the terms of the CCAA. The CCAA complies with the requirements of the Service's CCAA Policy.
- (2) Based, in part, on the analysis provided above in Part II, the Service finds that the CCAA's conservation measures and expected benefits to the GUSG, when combined with those benefits that will be achieved if it is assumed that similar conservation measures also were implemented on other necessary properties, will provide a conservation benefit to the species.
- (3) The direct and indirect effects of any authorized take of GUSG will not appreciably reduce the likelihood of survival and recovery in the wild of any species. Issuance of the Permit to the CDOW was reviewed by the Service under section 7 of the ESA. In a conference opinion, which is incorporated here by reference, the Service concluded that the direct and indirect effects of issuing the Permit and authorizing take of GSUGs will not appreciably reduce the likelihood of survival and recovery in the wild of any listed species including the GUSG.
- (4) Implementation of the terms of the CCAA is consistent with applicable Federal, State, and Tribal laws and regulations. The CCAA is consistent with all applicable Federal and State laws and regulations. The CCAA is approved and the Permit issued in accordance with the ESA. In accordance with the National Environmental Policy Act (NEPA), the Service prepared an Environmental Assessment (EA), incorporated here by reference. We contacted the Colorado Historical Society via letter on July 5, 2005, and received clearance that no cultural resource surveys are required unless ground disturbing activities occur. Therefore, we have complied with section 106 of the National Historic Preservation Act. There is land owned by the Ute Mountain Ute Tribe in occupied habitat in the Gunnison Basin. As of this

Finding, there has been no expression of interest by the Tribe for signing up under the CCAA, but if they do wish to sign up any Tribal laws and/or regulations that may be connected to CCAA actions on their land will be followed as agreed to in the CI.

- (5) Implementation of the terms of the CCAA will not be in conflict with any ongoing conservation programs for the GUSG. Approval of the CCAA and issuance of the Permit will compliment ongoing conservation programs.
- (6) The applicant has shown capability for and commitment to implementing all of the terms of the CCAA. Signing of the legally binding CCAA by the CDOW and the Service ensures that it will be implemented and commits all parties to obligations under the CCAA. Implementation of the CCAA will be a condition of the Permit, and a failure to perform obligations under the CCAA may be grounds for suspension or revocation of the Permit.

IV. GENERAL CRITERIA AND DISQUALIFYING FACTORS - ANALYSIS AND FINDINGS

The Service has no evidence that the Permit should be denied on the basis of the criteria and conditions set forth in 50 CFR 13.21(b)-(c). The CDOW has met the criteria for the issuance of the Permit and does not have any disqualifying factors that will prevent the Permit from being issued under current regulations.

V. PUBLIC COMMENTS AND SERVICE RESPONSES

The Service published a Notice of Availability of the CDOW's Permit application, draft CCAA and draft EA, in the *Federal Register* on July 6, 2005 (70 FR 38977-38978). Publication of the notice initiated a 60-day comment period, which closed on September 6, 2005. The Service received seven comment letters. We responded to the comments, as illustrated below, and changed the draft CCAA and draft EA based on the comments where applicable. We received many identical or similar comments. We consolidated similar comments, and provide responses as follows. Some individual comments within the documents received may be answered in several different responses.

Comment 1: Incidental take of the GUSG in the form of intentional killing (shooting) would be allowed through the Permit.

Response 1: The Permit will not allow intentional take of species, including shooting, of GUSG.

Comment 2: Predators are causing declines of sage-grouse.

Response 2: The Service agrees that predation may be a concern in some areas and situations. The CCAA has adopted conservation strategies in the interagency RCP that include predator management.

Comment 3: The Service should be aware that the CCAA and CIs are not conservation easements but are voluntary revocable contracts, which need to be flexible to allow for modifications and landowners need to be able to withdraw from them as they see necessary.

Response 3: We recognize that CIs are not conservation easements, participation under the CCAA through CIs is voluntary, and that changes to conservation measures in a CI, except those provided in the "Changed Circumstances Provided for in the CCAA", or withdrawal from a CI is voluntary. If it appears that conservation measures need to be changed, cooperation of the landowner will be sought to implement the changes. The landowner is not under any obligation to consent to the modifications.

Comment 4: The CDOW supervision of contractors involved in CCAA implementation should occur.

Response 4: The CDOW will supervise the contractors and will approve contractor documentation of baseline data. The contractors will only be gathering baseline habitat and land use data. The CDOW will conduct negotiations with landowners on conservation measures to be implemented.

Comment 5: It is difficult for landowners, including ranchers, to predict out to 20 years (the proposed length of the CCAA and Permit) all necessary endeavors on their land to maintain economic and operational well being so the process needs to be flexible.

Response 5: As stated in Response 3 above we believe the process is flexible and any changes or adaptive management measures proposed to modify CIs by the landowner, CDOW, or Service will be negotiated. If there is a changed circumstance and it is addressed in the "Changed Circumstances Provided for in the CCAA" section and in the CIs, the landowner may be required to conduct additional conservation measures. The landowner is not required to implement or allow additional conservation measures beyond those addressed.

Comment 6: The Service was encouraged to work with CDOW to finalize the Beaver Creek State Wildlife Area CI in the Gunnison Basin to use as an example.

Response 6: We worked with CDOW on a draft CI for the Beaver Creek State Wildlife Area, which was eventually made into a template CI and included as an appendix to the CCAA.

Comment 7: The commenter was unable to identify where in the CCAA the possible conservation strategies and modifications were identified if unforeseen circumstances should arise as stated in section 10(3)(a) of the CCAA.

Response 7: The strategies and possible modifications are not identified in the CCAA because we and the CDOW do not know what strategies or modifications would be necessary, since we do not know what unforeseen circumstances may occur. However, the Service and CDOW will use the six criteria in section 10(3)(b) of the CCAA, plus additional relevant and available criteria and information specific to the parcel, to determine conservation strategies, to the extent possible, that will be used to address the unforeseen circumstances.

Comment 8: The CCAA, CIs, and RCP are not an adequate replacement for listing under the ESA but might be used in place of a listing.

Response 8: We believe that the CCAA, CIs, and RCP will help enhance the long-term conservation of the species. The conservation measures under the CCAA and CIs only apply to non-Federal land that is enrolled under the CCAA. We recognize that the threats that exist to the sage-grouse on Federal lands and those non-Federal lands that are not enrolled also must be considered in a listing determination.

Comment 9: The pertinent provisions of Gunnison County's Land Use Resolutions should fall under the purview of the CCAA so land use changes are not arbitrarily decided as county commissions change.

Response 9: County land use falls under the jurisdiction of the counties and cannot be required to be included in a CCAA or CI. Gunnison County, and other counties, have the prerogative of developing and signing CIs. Any such CI will need to be consistent with applicable land-use codes. Similarly, any county may apply principles of the CCAA or CI to their land use codes outside of the CCAA process.

Comment 10: The CCAA and CIs are voluntary and not enforceable.

Response 10: The CCAA and CI are enforceable in that if the CDOW or landowner is not implementing the conservation measures as agreed to, the CCAA, or individual CI, and assurances that go along with them, can be suspended or revoked.

Comment 11: The best management practices (BMPs) compiled by Monsen (2005) are only broadly referred to and have not been monitored for effectiveness.

Response 11: The BMPs prescribed through the RCP and incorporated into the CCAA are designed to restore and approximate natural ecosystem functions and will be relied on when conducting habitat enhancement or restoration efforts. They are based on the best scientific and commercial information available for sagebrush community restoration.

Comment 12: It is uncertain what adaptive management would entail.

Response 12: Adaptive management would include changing or adding conservation measures to CIs based upon the latest scientific and commercial information. New information could become available through monitoring of implemented conservation measures, research, or other sources.

Comment 13: The RCP is not a lawful recovery plan under the ESA.

Response 13: We agree. It is not stated in the CCAA or EA that the RCP will become a Federal recovery plan, nor has the Service ever stated that it will become one. Conservation actions and concepts in the RCP will be considered for incorporation, and may form the basis of any future recovery plan. However, the best scientific and commercial information available at the time of a recovery plan's development will be incorporated to ensure that the GUSG is recovered in the best manner and shortest timeframe possible.

Comment 14: Actions in the RCP are not adequate to recover the sage-grouse.

Response 14: Conservation actions in the RCP were based on the best scientific and commercial information available, were agreed upon by the RCP's Rangewide Steering Committee members composed of interagency biologists concerned about GUSG conservation, were peer-reviewed, and were publicly reviewed. Peer review and public review comments were incorporated into the final RCP to produce a document the Service believes will help enhance the long-term survival of the sage-grouse. The Service has no additional information that would provide additional guidelines on managing GUSG.

Comment 15: The RCP and EA fail to identify sources of funding to implement conservation measures including administration of the CCAA and landowner incentives described in the CCAA and EA.

Response 15: The RCP has a list of State and Federal programs in Appendix C that can provide funding of conservation actions. The EA includes potential funding sources by reference to the RCP. Additionally, the Federal agencies have wildlife program funding that can provide some funds for conservation. In signing the CCAA, CDOW is committing to conduct baseline monitoring, implementing identified conservation measures, and monitoring effectiveness of the conservation measures. It follows that they will be responsible for identifying funds to accomplish that.

Comment 16: The Service will be in violation of its duty to not jeopardize the continued existence of the GUSG through approval of the CCAA and Permit.

Response 16: A conference opinion has been completed which determined that approval of the CCAA and issuance of the Permit does not jeopardize the existence of the GUSG.

Comment 17: Incidental take through habitat modification and agricultural activities can be significant.

Response 17: We agree; however, issuance of the CCAA and CIs will ensure that take is minimized and mitigated through incorporated conservation measures.

Comment 18: Any take of sage-grouse in the small populations will be detrimental.

Response 18: As stated in Response 17, take will be minimized and mitigated through conservation measures. Additionally, a conservation benefit should occur through each CI by protecting, enhancing, or restoring habitat, thereby producing more sage-grouse. If conservation measures identified in the CCAA and CIs were not implemented, it could be expected that there would be more take than what would occur if they were implemented.

Comment 19: An incidental take permit is the appropriate permit to be issued, not an enhancement of survival permit, because they are for captive animals.

Response 19: We disagree. As authorized through 50 CFR Parts 13 and 17, a permit can be issued for enhancement of wild populations, not just captive animals.

Comment 20: The assurances provided do not allow for necessary changes and are contrary to the underlying purposes of section 10 of the ESA.

Response 20: Under section 10(1) of the CCAA, changed circumstances that are identified in the CCAA will be addressed through good faith efforts between landowners, CDOW, and the Service. Under section 10(2) of the CCAA, the landowner must provide consent if additional conservation measures not provided for in the CCAA are necessary to respond to changed circumstances. Under section 10(3)(a), if unforeseen circumstances occur the Service may require additional measures of the landowner to the maximum extent possible. If the conservation measures require additional land, water, or financial compensation or additional restrictions on use of land, water, or other natural resources available for development or use under the CI, the landowner must consent to the modifications. As an incentive, the CDOW has committed to seek funding for the additional conservation measures if the landowner agrees to conduct them.

Comment 21: West Nile virus, land conversions, and measures to address drought other than grazing management are not addressed in changed circumstances.

Response 21: Conservation measures for those three potential circumstances were not described in the draft CCAA. The CCAA has been changed to include measures to address West Nile virus and non-grazing related drought impacts. It was determined that land conversion was too broad a category and will not be allowed through the CCAA or CIs, at least to the extent that would cause impacts to GUSG such that there is no benefit of the CI. Consequently, land conversion has been removed as a changed circumstance.

Comment 22: A trigger for an unacceptable level of take is not stated nor is there a statement that a value could not be practically obtained.

Response 22: The conference opinion describes the level of acceptable incidental take. For estimated populations of 200 adult GUSG or less, take of 1 adult per year per population on enrolled lands is anticipated. This includes the Cerro Summit-Cimarron-Sims Mesa population, the Crawford population, the Dove Creek group of the Pinon Mesa population, and the Poncha Pass population. Take of 2 GUSG per year is anticipated for the San Miguel Basin population, which was estimated to be 334 in 2004. For the Gunnison Basin population, take of 24 GUSG is anticipated. This is based on 1 percent of the 2004 population estimate. Also, we have determined that 185 acres per population of loss or modification of habitat is acceptable. If incidental take of either numbers of sage-grouse or habitat reaches these levels, we will reinitiate section 7 consultation and examine changes in conservation measures needed to adequately protect the sage-grouse. Incidental take of individual sage-grouse will be reported to CDOW by landowners. The Service will receive annual monitoring reports from CDOW including reported incidental take. If the level of incidental take is determined by the Service to jeopardize the existence of the sage-grouse, the Service may suspend or revoke the CCAA as provided for in section 18 of the CCAA. We will be monitoring take through the amount of occupied habitat and habitat conditions through biological monitoring and compliance monitoring. However, we expect that implementation of conservation measures in the CCAA will result in an increasing number of sage-grouse and an increasing amount of occupied habitat. This will result from various conservation measures that will improve occupied, potential, and vacant/unknown habitat and reduce sage-grouse mortality. Additionally, following RCP guidance, sage-grouse transplants to vacant/unknown and potential habitats may facilitate expansion of sage-grouse numbers and their range.

Comment 23: The GUSG CCAA fails to comply with the CCAA policy.

Response 23: We believe it does comply with the CCAA policy. Based upon public comments, we have changed the CCAA to clarify funding commitments and clarify incorporation of the RCP conservation strategies into the CCAA and CIs. Furthermore, we have clarified that monitoring of the extent of occupied habitat, habitat condition, and reporting mortality of sage-grouse by landowners and the CDOW will be the way we will monitor "incidental take" of sage-grouse and their habitat.

Comment 24: The EA is inadequate because it does not take seriously the potential environmental consequences of a proposed action, and the Service must prepare an EIS.

Response 24: We believe the EA accounts for the environmental consequences, which should be negligible since the CCAA will help maintain good or excellent habitat and will restore or improve habitat if it requires enhancement; therefore, an EIS is not needed. The commenter did not identify any issues that would result in significant environmental consequences which have not been evaluated.

Comment 25: The Service must adequately analyze cumulative impacts in an EIS.

Response 25: We believe cumulative impacts were adequately analyzed in the EA.

Comment 26: The RCP is flawed and the Service should analyze the RCP in an EIS.

Response 26: As stated in Responses 8 and 14 above, we believe that the RCP, and conservation strategies contained within, will help enhance the status and long-term survival of the sage-grouse. The RCP is an interagency document and is not a Federal decision document. The EA examines the effects of implementing the CCAA which incorporates conservation strategies in the RCP. In the EA we determined that the CCAA will not have a significant effect on the human environment; therefore, an EIS is not required. Any conservation strategies contained in the RCP to be implemented by Federal agencies (although outside the scope of the CCAA) will undergo a separate NEPA analysis.

Comment 27: It is unclear why the CCAA term is 20 years when the RCP timeframe to meet conservation goals is 50 years.

Response 27: The CDOW applied for a 20-year Permit because they believed this was an appropriate timeframe to see if conservation measures under the CCAA could be implemented and be effective. The timeframe for the CCAA and Permit can be extended.

Comment 28: If enrolling properties under the CCAA may take up to 15 years does that mean that some properties may only be enrolled for 5 years before the CCAA expires?

Response 28: Yes, but again the CCAA and Permit can be extended.

Comment 29: The EA is premature because the Service cannot analyze the size, scope, and details of the CCAA and we do not know how many landowners, or how much land will be enrolled.

Response 29: The NEPA review and analyses are required for Federal actions that may significantly affect the human environment and, therefore, an EA (and/or EIS) was required to analyze the action. The size and scope of the action (i.e. how many landowners and how much land) at a maximum is approximately known but specifically how many landowners will participate is impossible to know. If we were to wait until that number is known, nearly all of the actions analyzed under the EA would have necessarily had to occur, rendering the EA unnecessary.

Comment 30: Why does the historic range of GUSG not include Oklahoma?

Response 30: As explained on page 32 of the RCP, Oklahoma and Kansas were not included because the descriptions of the grouse in the area were vague, there are no museum specimens, and the habitat was not typical for sage-grouse. For these reasons Schroeder et al. (2004) excluded these two States in their description of the species historic range. The Service and Rangewide Steering Committee agreed with this conclusion.

Comment 31: There are inconsistencies within and between the CCAA and EA on the percent of historic habitat that is currently occupied.

Response 31: We have corrected the inconsistencies and added a clarification in the final EA. The GUSG historical range is estimated to have been 55,350 km² (21,370 mi²), although not all of this range would have been occupied at any one time. The GUSG currently occur in 4,720 km² (1,820 mi²).

Comment 32: The EA states that the CDOW will contact landowners to encourage participation in the CCAA but the CDOW already contacted landowners in April 2005. It is still not known how many will sign up nor how that might affect the GUSG.

Response 32: Knowing exactly how many people will sign up in the near future can only be estimated from current expressions of interest, and it is often necessary to follow up with landowners more than once in order to achieve participation. However, we do not need to know how many landowners will sign up to enter into the CCAA.

Comment 33: The GUSG is a distinct species and any claim that it is not is without merit.

Response 33: We are unsure how this comment relates to the CCAA, EA, or Permit. However, we agree that the morphological, behavioral, and genetic evidence supports recognition of the GUSG as a distinct species.

Comment 34: The CCAA, EA, and Permit fail to recognize the historical distribution in Eagle, Garfield, and Pitkin Counties.

Response 34: Due to the uncertainty of the species' occurrence in this area, we are not currently including those three counties in the CCAA. Should it be proven through museum specimens or other unquestionable evidence that the GUSG occurred in those counties the Rangewide Steering Committee will make a determination whether all or a portion of the area should be considered historic, potentially suitable or vacant/unknown habitat. If the area is considered potentially suitable or vacant/unknown habitat, landowners will be invited to participate in the CCAA through CIs.

Comment 35: The incentives in the CCAA are not described.

Response 35: The primary incentive, as stated in the CCAA, is coverage of the landowner against incidental take should the GUSG become federally listed. The second incentive is landowner certainty that management actions on their land will not be changed, should the sage-grouse become listed.

Comment 36: The EA is inadequate because the alternatives considered will result in a fragmented approach to conservation of the GUSG.

Response 36: The EA analyzes the environmental consequences of CCAA and Permit issuance. The intent of the CCAA is to provide a coordinated rangewide approach to habitat protection and enhancement by placing priority on key properties within each of the populations. A prioritization list for enrollment of categories of land has been included in the CCAA that should minimize a fragmented approach.

Comment 37: The EA fails to describe how a "mutually agreeable site-specific management plan" will be developed.

Response 37: The CCAA describes the process of negotiation between landowners and the CDOW, with agreement by the Service.

Comment 38: It is unclear in the EA who will conduct biological surveys.

Response 38: The CDOW has the responsibility to conduct biological surveys either through a contractor or their own staff. We have clarified this in the EA.

Comment 39: The estimates of occupied and potential habitat in the EA are unrealistic and it is not described how they were arrived at.

Response 39: Satellite photos of habitat, as modified by CDOW and UDWR biologists familiar with local sage-grouse population areas, were used to determine estimates of occupied, potentially suitable, and vacant/unknown habitat. We believe that the process and estimates for occupied, potentially suitable, and vacant/unknown habitat used the best scientific and commercial information available.

Comment 40: The EA is inadequate in that it fails to consider that most of the factors responsible for the decline of GUSG will be continued through the CCAA.

Response 40: Through minimization and mitigation of the threats, we believe the CCAA and CIs will enhance the status of the sage-grouse and its habitat (as stated in Responses 8, 14, and 26).

Comment 41: Inadequate detail is provided in the EA on new land management and livestock grazing practices.

Response 41: The EA analyzes whether the proposed action, issuance of the CCAA and Permit or another alternative will significantly effect the human environment. The EA also states that the conservation strategies in the RCP will be utilized in the CCAA process. Therefore, we do not believe it needs to describe new land management and livestock

grazing practices in detail. The rangewide and local conservation strategy sections of the RCP and Appendix H of the RCP adequately identify management actions to address land management and livestock grazing.

Comment 42: The EA is inadequate in that it is wishful thinking that the GUSG population numbers will increase and there is no evidence of recovery in the small populations outside of the Gunnison Basin.

Response 42: The Service believes effective conservation measures implemented under the CCAA and CIs on non-Federal lands will result in population increases through maintenance, enhancement, and restoration of occupied, potentially suitable, and vacant/unknown habitat.

Comment 43: The EA fails to consider that conserving and enhancing populations of the GUSG will most likely not be compatible with economic vitality of some landowners reducing participation.

Response 43: The goal of the CCAA and CIs is to integrate conservation measures with economic vitality of landowners. If a landowner believes this is not possible he or she does not have to enter a CI.

Comment 44: Failure to discuss the potential negative impacts of treatments is a major flaw of the EA.

Response 44: The EA recognized that some short-term impacts are expected due to habitat treatments but each CI is individually and cumulatively expected to produce long-term benefits to the species. Monitoring will provide data to guide management.

Comment 45: The EA is inadequate because the necessary non-Federal and Federal properties on which conservation measures need to be implemented to preclude listing are not identified.

Response 45: We agree that they are not identified. However, priority areas for protection will be identified using criteria identified in the CCAA.

Comment 46: The EA is inadequate in that it fails to consider increases in elk numbers from sage-grouse habitat treatments. Furthermore, the CDOW appears unwilling or unable to reduce elk herd numbers.

Response 46: Overgrazing of sage-grouse habitat by elk is not likely a problem at a broad scale. Although we agree that increased elk foraging of vegetation in areas designed to benefit sage-grouse could occur, elk grazing problems appear localized and are not likely suppressing sage-grouse numbers. There is currently no evidence that competition for resources with elk is a limiting factor for GUSG in the Gunnison Basin. Projects specifically designed to increase herbaceous plant cover there may be impacted by elk herbivory, although data are lacking. In 2005, the U.S. Forest Service conducted additional prescribed burns in the area, and it is hoped these burns will help distribute the elk grazing pressure. Other populations of sage-grouse also have overlap with elk concentrations, but no adverse affects have been reported. The CDOW has been attempting to reduce the elk herd in the other sage-grouse population areas and some of the herds are decreasing. We have expanded discussion of elk herbivory in the EA.

Comment 47: The data on page 23 of the EA suggest that the EA is inaccurate in stating that there are no federally listed plant species within the CCAA boundary.

Response 47: There are only two federally-listed plants close to the occupied, potentially suitable, and vacant/unknown range of the sage-grouse; *Eriogonum pelinophilum* (clay-loving wild-buckwheat) and *Sclerocactus glaucus* (Uinta Basin hookless cactus). According to the Uncompahgre and Grand Junction Field Offices of BLM there are no records of either of these plants overlapping with occupied, potentially suitable, or vacant/unknown GUSG range.

Comment 48: The EA fails to discuss the issue of hunting similar looking species such as blue grouse within GUSG range.

Response 48: We recognize that some inadvertent harvest of GUSG may occur, but the level is expected to be insignificant in terms of species survival and we do not believe that prohibiting blue grouse hunting within the range of GUSG is warranted.

Comment 49: The CCAA makes a bad assumption that parcels enrolled in Farm Bill programs, such as the Conservation Reserve Program, are protected and can be counted as progress toward protection targets because the programs may be short-term or contain negative provisions toward sage-grouse and their habitat.

Response 49: Through the monitoring techniques and CDOW database described in sections 11-12 of the CCAA, we will monitor protections provided by lands enrolled under Farm Bill programs to determine if they do indeed provide conservation of the sage-grouse. If they do not, those lands will not be counted toward conservation progress and other means to protect the lands will be discussed with the landowner. If the landowner is not willing to protect the land through the CCAA process, conservation easement, or other means, the lands will not be included toward protection goals for the sage-grouse.

VII. RECOMMENDATION ON PERMIT ISSUANCE

Based on the foregoing finding with respect to the proposed action, I recommend issuance of a section 10(a)(1)(A) Permit to authorize incidental taking of GUSG by the CDOW and other participating non-Federal landowners in accordance with the CCAA.

Mike Stempel
Assistant Regional Director, Ecological Services

10/18/06
Date

Richard A. Coleman
Concur: Deputy Regional Director, Region 6

10/19/06
Date